

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,
LLC, a Delaware Limited Liability Company; and
BLACKWATER LODGE AND TRAINING
CENTER, INC. a Delaware Corporation,

Plaintiffs,

v.

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, a Georgia
Corporation; EVANSTON INSURANCE
COMPANY, an Illinois Corporation; FIDELITY
AND CASUALTY COMPANY OF NEW YORK,
a South Carolina Corporation; and LIBERTY
INSURANCE UNDERWRITERS, a
Massachusetts Corporation,

Defendants.

Civil Action No. 05 6020

Electronically Filed

Assigned to Judge Petrese B. Tucker

**DEFENDANT EVANSTON
INSURANCE COMPANY'S ANSWER
TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON THE DUTY TO DEFEND AND
EVANSTON INSURANCE
COMPANY'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Evanston Insurance Company ("Evanston") responds to Plaintiffs' motion for partial summary judgment on the duty to defend and cross-moves for summary judgment in its favor. A supporting memorandum, cases and a Proposed Order accompany the filing of this motion.¹

Evanston respectfully submits that it is entitled to summary judgment in its favor because the evidence on record shows no genuine issue of material fact exists and Evanston is entitled to judgment as a matter of law. Under the terms of Professional Liability Policy No, EO 819173, issued by Evanston to Plaintiffs, Evanston has no duty to defend or indemnify Plaintiffs in

¹ Evanston also relies upon the following exhibits to the Declaration of Andrew Howell ("Howell Decl."), submitted in support of Blackwater's Motion for Partial Summary Judgment against Evanston Insurance Company): (a) Evanston's Policy, no. EO819173 (Howell Decl., Exh. A); (b) the Complaint in the underlying action captioned *Nordan v. Blackwater Security Consulting LLC, et al.*, 05 CVS 000173, pending in the Superior Court of North Carolina, Wake County (Howell Decl., Exh. B); and (c) the February 23, 2005 declination letter sent to Blackwater on Evanston's behalf (Howell Decl., Exh. E.). In addition, Evanston relies upon the Howell Decl. at ¶ 2.

connection with the underlying action captioned *Nordan v. Blackwater Security Consulting LLC, et al.*, 05 CVS 000173, pending in the Superior Court of North Carolina, Wake County.

Evanston also asks that the court grant summary judgment on Blackwater's claim of bad faith in Count IV of its complaint.

Comparing the facts alleged in the complaint in the *Nordan* Complaint with the terms of the Policy, no possibility of coverage exists. The Policy bars coverage for claims brought by or in the right of Blackwater's contractors or subcontractors. The *Nordan* Complaint is a wrongful death lawsuit filed in the right of four deceased Blackwater contractors. Therefore, Evanston has no duty to defend Blackwater. In the absence of a duty to defend, there can be no duty to indemnify. In the absence of a duty to defend or indemnify, there can be no bad faith. Evanston relies upon and incorporates the attached Memorandum of Law, in support thereof.

WHEREFORE, Defendant Evanston Insurance Company respectfully request that this Court enter the accompanying proposed Order pursuant to Fed. Civ. P. 56.

Respectfully submitted,

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO

By: /s/ Francis P. Burns III (Valid. code fb418)
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Attorneys for Evanston Insurance Company